Circuit Court for Baltimore City
Case No. 117142004

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2383

September Term, 2018

ERON JOHNSON

v.

STATE OF MARYLAND

Wright,
Kehoe,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: September 18, 2019

Appellant, Eron Johnson, was convicted by a jury in the Circuit Court for Baltimore City of multiple sex offenses, second-degree assault, and reckless endangerment.[1] On appeal from his convictions, appellant presents the following questions for our review:

1. Did the [circuit] court err in concluding that police had reasonable suspicion to stop Mr. Johnson?

2. Did the [circuit] court err in concluding that Mr. Johnson's custodial statement to police, and waiver of *Miranda* rights, were voluntary?

3. Did the [circuit] court err in admitting a 911 call made by an unknown declarant?

Finding no error, we affirm.

BACKGROUND

The evidence produced at the suppression hearing showed that on April 27, 2017 at 2:40 a.m., Lieutenant Troy Walton of the Baltimore Police Department responded to a 911 report of "a woman screaming in the area of Old Town Mall." Lieutenant Walton arrived at the 400 block of Old Town Mall and assisted two other officers "stop an individual in reference to a woman screaming and an individual running from the scene." Lieutenant Walton identified appellant as the individual he stopped, approximately five hundred feet from the Old Town Mall.

When appellant was stopped, he stated, "I didn't do anything, I didn't do anything, I was just taking a piss." Lieutenant Walton observed that appellant "wasn't naked, he was clothed[,]" and "his pants were unzipped."

[1] Appellant was acquitted of the charges of first and second-degree rape.

Appellant was handcuffed and the lieutenant performed a quick pat-down of appellant's clothes. Appellant was detained briefly while police spoke with P.M.-R.[2] P.M.-R. identified appellant as "as the person who had raped her," and he was arrested. P.M.-R. also informed police that appellant had a knife. Lieutenant Walton then searched appellant and found a knife in his front pants pocket.

Lieutenant Walton testified that, at the time he stopped appellant, he was investigating a report of a woman screaming in the area. He did not have any information concerning a rape at that time. Lieutenant Walton stated that the investigation became a sex offense investigation only after officers spoke with P.M.-R. and she reported to them that she had been raped.

The suppression court determined that police had reasonable, articulable suspicion of criminal activity to stop appellant:

> What the information at the time imparted to the officers was that they were responding to calls for a screaming woman in a -- what used to be a commercial area but largely a vacant area now of an area just outside of downtown and therefore people don't scream unless they're apprehending some sort of harm, it's reasonable for the officers to sense that there was some sort of violence happening or about to happen.
>
> One officer arrives on the scene, and this is all information that's obtained by the lieutenant through police communications, indicates that he sees from the area of the alleged victim a person fleeing, that person is stopped pursuant to that officer's information, that person turns out to be [appellant]. They stop and they hold him sort of in a neutral position, i.e, but they do in fact detain him in the [*Terry*][3] sense of the word. They cuff him and do a brief pat down, and inasmuch as they're investigating at this point

[2] We shall refer to the victim as P.M.-R. to protect her privacy.

[3] *Terry v. Ohio*, 392 U.S. 1 (1968).

> what reasonably can be construed as a potentially violent crime they do a pat down and that is justified under the various progeny of [*Terry*]. And although they don't actually do a thorough [] search they are allowed for police safety to do that pat down, frisk.

As noted, the sole issue in this appeal is whether the police had reasonable suspicion to conduct a *Terry* stop of appellant.[4]

DISCUSSION

I. The *Terry* Stop

Appellant contends that the suppression court erred in denying his motion to suppress evidence of the knife found in his pocket after he was unlawfully stopped by police. Appellant argues that police lacked reasonable suspicion that a crime had been committed and particularized suspicion that he was engaged in wrongdoing to justify stopping and detaining him.

The State counters that the police had reasonable suspicion to stop appellant, given that the police were responding to a 911 report of criminal activity after 2:00 a.m., in a largely abandoned area, and they observed appellant fleeing from the area when they arrived. The State contends that because the stop of appellant was lawful, the motions court properly denied appellant's motion to suppress the knife that was subsequently seized from him.

The Court of Appeals recently reaffirmed the standard of review for a motion to suppress:

[4]At the suppression hearing, appellant also argued that police lacked both reasonable suspicion to pat-down his person and probable cause to arrest and search him incident to arrest. He does not advance those arguments on appeal.

> Our review of a circuit court's denial of a motion to suppress evidence is limited to the record developed at the suppression hearing. We assess the record in the light most favorable to the party who prevails on the issue that the defendant raises in the motion to suppress. We accept the trial court's factual findings unless they are clearly erroneous, but we review de novo the court's application of the law to its findings of fact. When a party raises a constitutional challenge to a search or seizure, this Court renders an independent constitutional evaluation by reviewing the relevant law and applying it to the unique facts and circumstances of the case.

Pacheco v. State, __ Md. __, No. 17, Sept. Term 2018, slip. op. at 4 (filed August 12, 2019) (citations and internal quotation marks omitted).

The Fourth Amendment to the United States Constitution protects individuals from unreasonable searches and seizures. *Terry v. Ohio*, 392 U.S. 1, 8 (1968). For Fourth Amendment purposes, there are three categories of encounters between citizens and police: (1) the arrest; (2) the investigatory stop or *Terry* stop; and (3) the consensual encounter. *Swift v. State*, 393 Md. 139, 149-50 (2006); *Mack v. State*, 237 Md. App. 488, 493-94 (2018). The second type of encounter, the *Terry* stop, constitutes "a Fourth Amendment intrusion upon a citizen's otherwise unfettered freedom," and because it is less intrusive than an arrest, it does not require probable cause, but rather, a "reasonable, articulable suspicion of criminal activity" and "can only last as long as it takes a police officer to confirm or to dispel his [or her] suspicions." *Pyon v. State*, 222 Md. App. 412, 420-21 (2015) (quoting *Swift*, 393 Md. at 150) (internal quotation marks omitted).

There is no uniform test for determining what circumstances constitute reasonable suspicion. *Crosby v. State*, 408 Md. 490, 507 (2009). While reasonable suspicion is a less demanding standard than probable cause, it nevertheless embraces something more than an "inchoate and unparticularized suspicion or 'hunch.'" *Id.* (quoting *Terry*, 392 U.S. at

27). A court's determination of whether a law enforcement officer acted with reasonable suspicion must be based on the totality of the circumstances. *Id.* (citation omitted); *United States v. Arvizu*, 534 U.S. 266, 273 (2002). "We have described the standard as a common sense, nontechnical conception that considers factual and practical aspects of daily life and how reasonable and prudent people act." *Holt v. State*, 435 Md. 443, 460 (2013) (citations and quotation marks omitted). We "assess the evidence through the prism of an experienced law enforcement officer, and 'give due deference to the training and experience of the . . . officer who engaged the stop at issue.'" *Id.* at 461 (quoting *Crosby*, 408 Md. at 508).

In this case, police were responding to a radio call of a woman heard screaming in an area of vacant commercial buildings at 2:40 a.m. Upon arrival, police observed appellant running from the immediate area of the buildings. These facts, viewed together, were sufficient to establish reasonable suspicion that appellant was engaged in criminal activity and warranted further investigation. *See Illinois v. Wardlow*, 528 U.S. 119, 124 (2000) ("Headlong flight - wherever it occurs - is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such"); *Grant v. State*, 55 Md. App. 1, 21 (1983) (noting that "special credence" should be given to an officer's assessment of the "characteristics of the area and the behavior of a suspect who appears to be evading police contact") (citation and quotation marks omitted); *Watkins v. State*, 288 Md. 597, 603-04 (1980) (recognizing that flight, when "corroborated by other suspicious circumstances," may provide reasonable grounds for a stop).

Appellant argues that police had nothing more than an inchoate and unparticularized "hunch" of criminal activity, because they were not yet investigating a sexual assault, nor did they have any reason to suspect that he was involved in criminal activity when they stopped him. We are aware of no cases requiring police to identify a specific category of criminal activity to establish reasonable suspicion. Rather, police must have a "particularized and objective basis' for suspecting legal wrongdoing." *Collins v. State*, 376 Md. 359, 368 (2003) (quoting *Arvizu*, 534 U.S. at 273) (further citations omitted). Certainly a person running, alone, from an area of vacant buildings in the middle of the night, immediately following a radio call for police to respond to a report of someone screaming at that location, was sufficiently suspicious of criminal activity to warrant an investigatory stop of appellant. *See Sizer v. State*, 456 Md. 350, 372-73 (2017) (noting significance of defendant's flight in course of police investigation, such that "officers were not required to simply shrug [their] shoulders and allow . . . [an apparent] criminal [misdemeanant] to escape") (citations and internal quotation marks omitted) (brackets in *Sizer*).

Based on the totality of the circumstances in this case, we hold that the police had an objectively reasonable basis for suspecting that criminal activity was afoot and appellant was involved in that activity to warrant the investigatory stop of appellant.

II. Admissibility of Appellant's Statement to Police

Appellant contends that the circuit court erred in failing to suppress the statement he made to police because the statement was not made voluntarily. In this case, appellant did not "confess" to anything, rather he argued that his statement to police denying that he

had interacted with P.M.-R. on the night of the assault should have been suppressed.[5] He argues that he experienced physical pain, sleep deprivation, and lack of cognitive coherence during the police interview, and those circumstances overpowered his will, resulting in the involuntary waiver of his *Miranda* rights and his giving a statement to police.

In *Moore v. State*, 422 Md. 516, 528 (2011), the Court of Appeals set forth the standard of review for *Miranda* issues:

> [W]e view the evidence and inferences that may be reasonably drawn therefrom in a light most favorable to the prevailing party on the motion, here, the State. We defer to the motions court's factual findings and uphold them unless they are shown to be clearly erroneous. We, however, make our own independent constitutional appraisal, by reviewing the relevant law and applying it to the facts and circumstances of this case.

(Internal citations and quotation marks omitted.)

This standard of review also applies to voluntariness determinations. *See Jones v. State*, 173 Md. App. 430, 441-42 (2007) (a trial court's determination of the voluntariness of a statement is a mixed question of law and fact, subject to de novo review); *Lincoln v. State*, 164 Md. App. 170, 180 (2005) (We give due deference to the suppression court's first level findings of fact, however, and we accept those factual findings unless they are clearly erroneous).

In *Hof v. State*, 97 Md. App. 242, 285-94 (1993), *rev'd on other grounds*, 337 Md. 581 (1995), "this Court analyzed in some depth why the satisfaction of *Miranda* is almost

[5] Appellant's statement, though exculpatory, is still subject to the protections of *Miranda*. *See State v. Kidd*, 281 Md. 32, 39-40 (1977) (explaining that *Miranda* did not distinguish between inculpatory and exculpatory statements).

always an *ipso facto* satisfaction of the voluntariness test embodied in the Fifth and Fourteenth Amendments." *Ashford v. State*, 147 Md. App. 1, 55 n.12 (2002). This Court explained in *Hof*:

> Where *Miranda* is both *applicable and satisfied*, the less demanding traditional voluntariness test (in its constitutional or non-constitutional guise) will coincidentally have been *ipso facto* satisfied in the process. The *voluntariness* of the statement, of course, will be inherent in the *voluntariness* of the *Miranda* waiver requirement. Holding a prisoner without food or water until he agrees to confess, for instance, would, of course, render any consequential confession involuntary. Similarly, holding that same prisoner without food or water until he agrees to waive his *Miranda* rights would, of course, render any consequential *Miranda* waiver equally involuntary. . . . The quality of free will for either voluntary act is the same. The influences that would erode such free will in either circumstance are the same. Conversely, the satisfaction of the voluntariness test in either circumstance is the same.

97 Md. App. at 288-89.

The State bears the burden of proving by a preponderance of the evidence that a defendant knowingly and intelligently waived his or her rights to counsel and his or her privilege against self-incrimination, *McIntyre v. State*, 309 Md. 607, 614-15 (1987), and that the defendant's statement was voluntary. *Lee v. State*, 418 Md. 136, 160 (2011) (citing *State v. Tolbert*, 381 Md. 539, 558 (2004)). The factors to be considered in determining the voluntariness of a statement include: where the interrogation was conducted; its length; who was present; how it was conducted; its content; whether the defendant was given *Miranda*[6] warnings; the mental and physical condition of the defendant; the age,

[6] In *Miranda v. Arizona*, 384 U.S. 436, 467 (1966), the United States Supreme Court recognized that custodial interrogations generate "inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where (continued)

background, experience, education, and intelligence of the defendant; when the defendant was taken before a court commissioner following arrest; and whether the defendant was physically mistreated or psychologically pressured. *Hof*, 337 Md. at 596-97 (citations omitted). Ultimately, the voluntariness of a statement turns on "'the totality of all of the attendant circumstances.'" *Whittington v. State*, 147 Md. App. 496, 519 (2002) (quoting *Burch v. State*, 346 Md. 253, 266 (1997) (further citations omitted).

Here, appellant argues that he was suffering from physical pain because his stomach hurt due to his bladder problem, and he had to use the restroom. Appellant attempts to demonstrate that the physical pain and discomfort caused by his bladder condition impacted the voluntariness of his statement to police by comparing this case to *Mincey v. Arizona*, 437 U.S. 385 (1978). In *Mincey*, the petitioner provided a statement to police while intubated in a hospital intensive care unit after sustaining a gunshot wound to the leg, and complaining that his leg pain was "unbearable." *Id*. at 398-99. The Supreme Court held that the petitioner's statement was involuntary as it was "the result of virtually continuous questioning of a seriously and painfully wounded man on the edge of consciousness." *Id.* at 401.

Appellant's reliance on *Mincey* is misplaced, as it is factually distinguishable from this case. Here, appellant was not suffering from a condition that required hospitalization

he would not otherwise do so freely." The Supreme Court held that unless police advised a suspect of his rights to remain silent and to counsel, any statement made by the suspect could not be admitted into evidence at trial. *Id*. at 473-74.

or intubation, nor did he indicate that he was in agonizing pain. The evidence showed that, upon appellant's arrival at the police station, he asked to use the bathroom three times in a 45-minute span of time, and he was provided that relief each time he asked. Detective Michael Lash testified at the suppression hearing that before he began appellant's interview, he asked appellant if he needed any water or bathroom breaks, and appellant responded that he did not.

The evidence showed that at one point during the interview, appellant informed Detective Lash that he had a bladder problem, his stomach hurt, and he needed to use the restroom. Detective Lash stopped the interview at that time to give appellant a bathroom break. The trial court, after noting that each time appellant requested to use the bathroom, the detective obliged him, found that the police were not withholding services from appellant.

Appellant also contends that he was sleep deprived and lacked cognitive coherence during the interview as evidenced by his confusion as to his age and educational background. Detective Lash testified that appellant had slept in the holding area for approximately five hours prior to the interview. The evidence showed that during the interview, appellant yawned, but at no point did he indicate that he was too tired to continue or that he needed a break. Appellant stated to Detective Lash that his birthdate was May 17, 1986, and that he was forty-five or forty-six years old.[7] Appellant also indicated that

[7] Had appellant's birthdate been May 17, 1986, he would have been almost thirty-one years old at the time of the interview.

he would "sometimes forget" his age and educational background because "it was so long ago."

The trial court determined that, though appellant seemed "a little sleepy during [the interview]," and may have had a "cloudy mind" due to fatigue, he nonetheless responded appropriately to the questions posed by the officers and indicated that he understood his *Miranda* rights.

Based on our review of the totality of the circumstances, we agree with the circuit court that though appellant may have suffered some fatigue and discomfort, appellant understood the questions asked by Detective Lash and answered coherently. *See Harper v. State*, 162 Md. App. 55, 84-85 (2005) (holding that court did not err in determining that defendant's statement was voluntary, despite evidence that defendant was sleep-deprived and under the influence of drugs and alcohol); *McCray v. State*, 122 Md. App. 598, 614-16 (1998) (holding that court did not err in finding that defendant's statement was voluntary, despite evidence that she had slurred speech, was under the influence of alcohol, and that some of her answers were "off base," because she understood "what she was saying" and "what was going on around her," when she waived her rights).

We conclude that appellant's will was not overpowered by the discomforts that he endured during his custodial interview. Accordingly, we perceive no error in the circuit court's determination that appellant's statement to police denying that he had any interaction with P.M.-R. was voluntarily made.

III. Admissibility of the 911 Call

Appellant contends that the circuit court erred in denying his motion to suppress the 911 call because it was hearsay, not admissible within a hearsay exception, and it violated his confrontation rights. The State argues that the 911 call was admissible under the present sense impression exception to the hearsay rule. The State also contends that the 911 call did not violate appellant's confrontation rights because it was non-testimonial, as its primary purpose was to communicate an ongoing emergency.

Md. Rule 5-801(c) defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-802 provides that, "[e]xcept as otherwise provided by these rules or permitted by applicable constitutional provisions or statutes, hearsay is not admissible."

Hearsay is generally inadmissible unless it falls within an exception to the hearsay rule or is permitted by applicable constitutional provisions or statutes. *Thomas v. State*, 429 Md. 85, 98 (2012) (citing *Bernadyn v. State*, 390 Md. 1, 7-8 (2005)); Rule 5-802. A trial court "'has no discretion to admit hearsay in the absence of a provision providing for its admissibility.'" *Gordon v. State*, 431 Md. 527, 536 (2013) (quoting *Bernadyn*, 390 Md. at 8). "[T]he trial court's ultimate determination of whether particular evidence is hearsay or whether it is admissible under a hearsay exception is owed no deference on appeal, but the factual findings underpinning this legal conclusion necessitate a more deferential standard of review." *Gordon*, 431 Md. at 538. Accordingly, we review the trial court's

legal conclusions de novo, but we will not disturb the trial court's factual findings absent clear error. *Id*. (citations omitted).

Prior to trial, appellant moved to suppress the 911 call in its entirety. The 911 call was transcribed as follows:

> OPERATOR: City 9-1-1 operator (indiscernible) what's the emergency?
>
> CALLER: Yes. Old Town Mall in - - in Baltimore, Maryland.
>
> There's a lady about to get - - it seems like she's about to get raped by some kid.
>
> It's in Old Town Mall right by the fire - - fire house museum.
>
> And it just seems like somebody like messing - - like somebody or more than one person is messing with her.
>
> (Pause).
>
> OPERATOR: What hundred block? What - - what street?
>
> CALLER: It's like in Old Mall like right next to the - - it's off of Gay Street. It's - - it's right on - - in Old Town Mall, right - - right next to the fire house - - the fire house museum.
>
> OPERATOR: Give me a description of whoever you saw.
>
> CALLER: Just a younger male. Couldn't tell what - - what ethnicity or whatever because it's dark out trying to mess with the - - the woman. I hear yelling and - -
>
> OPERATOR: Well, what was he wearing?
>
> CALLER: - - and saying, help.
>
> I don't know. A hoodie. Something. I don't know.
>
> OPERATOR: Did you see him?
>
> CALLER: No. I - - no, I can't.

OPERATOR: What about the female?

CALLER: No. I don't know. He - - but you'll - - you'll know because she's - - she's yelling.

OPERATOR: What is - -

CALLER: It's in - - it was in the passing. I - - I'm not there still.

OPERATOR: What is your name?

CALLER: DJ.

A. Hearsay Exception[8]

Appellant contends that the caller's statements were not present sense impressions because they were not spontaneous, given that the caller was describing something he saw "in the passing" and, as he stated, that he was "not there still."

Rule 5-803(b)(1) defines a present sense impression as a "statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter." To qualify as a present sense impression, the statement must be contemporaneous with the declarant's observation or perception of the event and must only describe or explain an "event or condition" observed by the declarant. *Booth v. State*, 306 Md. 313, 323 (1986) (citation omitted).

In *Booth*, the Court of Appeals explained the spontaneity requirement of the present sense impression exception:

> Although statements offered under this exception will usually be those made at the time an event is being perceived, we recognize that precise

[8] Because we conclude, as did the suppression court, that the 911 call was admissible as a present sense impression, we need not address the parties' arguments as to whether the call was also admissible as an excited utterance.

> contemporaneity is not always possible, and at times there may be a slight delay in converting observations into speech. However, because the presumed reliability of a statement of present sense impression flows from the fact of spontaneity, the time interval between observation and utterance must be very short. The appropriate inquiry is whether, considering the surrounding circumstances, sufficient time elapsed to have permitted reflective thought.

306 Md. at 324.

The Court explained further that "[a]lthough the declarant need not have been a participant in the perceived event, it is clear that the declarant must speak from personal knowledge, i.e., the declarant's own sensory perceptions." *Id*. at 324-25.

In this case, the suppression court determined that the 911 caller's statements constituted a present sense impression because the caller was "speaking in the present tense" when he described his observations of hearing a woman "yelling" and somebody "messing" with her. The court noted that the statements were consistent with "something that's happening or has very recently happened in [the caller's] presence and thus causing him to make the report."

Although the caller states that he is no longer at the location where he heard the commotion, he repeatedly speaks in the present tense, stating that a woman is "about to get raped" and it "seems like" someone is "messing" with her. The caller is speaking from personal knowledge, stating, "she's yelling" and "I hear yelling[.]" The caller also indicates that he believes that the emergency is ongoing when, in response to the operator's request for a description of the woman, he responds that "you'll know because … she's yelling." *See Washington v. State*, 191 Md. App. 48, 95 (2010) (concluding that the court did not err in admitting the statement "the guy's looking for a fight" under the present sense

impression exception, as it was spoken a few minutes after the conclusion of a conversation and described the defendant's demeanor). On this record, we conclude that the suppression court did not err in determining that the statements in the 911 call were sufficiently contemporaneous with the caller's observations of the event, and were, therefore, admissible under the present sense impression exception to the rule against hearsay.

B. Right to Confrontation

Appellant argues that the 911 call should have been suppressed because "the purpose of the call was to establish facts relevant to a prosecution, not to respond to an ongoing emergency[,]" and therefore, it violated his confrontation rights.

The Sixth Amendment to the United States Constitution provides that a defendant in a criminal trial has the right "to be confronted with the witnesses against him[.]" U.S. CONST. Amend. VI. The Sixth Amendment "guarantees a defendant's right to confront those who bear testimony against him." *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 309 (2009) (citations and quotation marks omitted). The Sixth Amendment prohibits "admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination." *Crawford v. Washington*, 541 U.S. 36, 53-54 (2004). Whether a statement violates a defendant's confrontation rights is a question of law, which we review de novo. *Langley v. State*, 421 Md. 560, 567 (2011).

In *Crawford*, the Supreme Court held that the Confrontation Clause prevents testimonial statements made by witnesses who are unable to testify at trial, and where the defendant did not have a prior opportunity for cross-examination. 541 U.S. at 53-54. The

Court also provided examples of testimonial statements: "*ex parte* in-court testimony or its functional equivalent — that is, material such as affidavits, custodial examinations, prior testimony that the defendant was unable to cross-examine, or similar pretrial statements that declarants would reasonably expect to be used prosecutorially[.]" *Id*. at 51 (citations omitted). The Court of Appeals has explained that "[u]nder the framework established by *Crawford* and its progeny, the Confrontation Clause only applies when an out-of-court statement constitutes testimonial hearsay." *Derr v. State*, 434 Md. 88, 106 (2013). The "critical inquiry" is "whether the challenged statement is testimonial." *Id*. at 107.

In *Davis v. Washington*, 547 U.S. 813, 828 (2006), the Supreme Court held that a 911 caller's statements that the defendant was attacking her were nontestimonial. The Court explained that "the nature of what was asked and answered…, again viewed objectively, was such that the elicited statements were necessary to be able to *resolve* the present emergency, rather than simply to learn (as in *Crawford*) what had happened in the past." *Id*. at. 827. The circumstances of the 911 call indicated that its primary purpose was to obtain police assistance in an ongoing emergency, as the caller was not "acting as a witness," nor was she testifying. *Id*. at. 828 (emphasis omitted). As the Court aptly noted, "No 'witness' goes into court to proclaim an emergency and seek help." *Id*. *See also Clark v. State*, 188 Md. App. 110, 125 (2009) (determining that the crime victim's statements in a 911 call were nontestimonial where the "primary concern" of someone in her situation was to obtain help, "not to create evidence for use in a future prosecution against [the defendant]"); *Langley*, 421 Md. at 577-78 (holding that a 911 caller's statements that a shooting had "just occurred" were nontestimonial because the caller's reports that a

shooting was "just happening," and that the shooter was fleeing were part of an ongoing emergency).

Here, we conclude that the 911 caller's statements were not testimonial because they were made for the purpose of obtaining assistance for someone the caller suspected was "about to get raped." The caller's report of someone "yelling" and somebody "messing" with "a lady" were the caller's observations of events that were "just happening" in the course of an ongoing emergency. The admission of the 911 call did not violate appellant's confrontation rights and the circuit court did not err in denying appellant's motion to suppress the 911 call.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.